

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBIN HOUSTON, :
: Plaintiff :
: : CIVIL ACTION
v. : FILE NO. _____
:
PUBlix SUPER MARKETS, INC., :
: Defendant :
:

NOTICE OF REMOVAL

TO: The Judges of the United States District Court, Northern District of Georgia
Defendant Publix Super Markets, Inc. (“Publix”) respectfully shows the Court
as follows:

1.

A civil action has been brought against Publix in the State Court of Gwinnett County, State of Georgia, by the above-named Plaintiff, said action being designated as Civil Action No. 12C-06979-4 in which Plaintiff, as shown further below, seeks recovery of elements and items of damages which in total exceed \$75,000.00 exclusive of post-judgment interest and costs.

2.

The Plaintiff is now, was at the time of the commencement of this action, and at all times since has been a citizen and resident of the State of Georgia.

3.

Defendant Publix Super Markets, Inc. is now, was at the time of the commencement of this lawsuit, and at all times since, a corporation organized and existing under the laws of the State of Florida, having its principal place of business in Lakeland, Florida.

4.

Defendant Publix Super Markets, Inc. attaches copies of the Summons and Complaint, marked Exhibit "A," Demand for Trial by Jury, marked Exhibit "B," Plaintiff's First Interrogatories to Defendant, marked Exhibit "C," Plaintiff's First Requests for Production of Documents to Defendant, marked Exhibit "D," a copy of the Answer of Publix Super Markets, Inc., marked Exhibit "E," Demand for Twelve Person Jury, marked Exhibit "F," Defendant Publix's First Interrogatories to Plaintiff, marked Exhibit "G," Defendant Publix's First Requests for Production of Documents to Plaintiff, marked as Exhibit "H," Defendant Publix's Answers to Plaintiff's First Interrogatories, marked as Exhibit "I," Defendant Publix's responses to Plaintiff's

First Requests for Production of Documents, marked as Exhibit “J,” Plaintiff’s Answers to Publix’s First Interrogatories, marked as Exhibit “K,” and Plaintiff’s First Responses to Publix’s First Request’s for Production of Documents, marked as Exhibit “L,” all filed in the State Court of Gwinnett County, Georgia, and Publix’s Non-Party Requests for Documents, marked as Exhibit “M”.

5.

In *Plaintiff’s Complaint for Damages*, filed on October 24, 2012, Plaintiff Robin Houston alleges an incident occurred at Publix on July 12, 2012. As a result she asserted a claim for medical expenses, lost income, and pain and suffering in excess of \$50,000.

6.

From Plaintiff’s responses to Publix’s discovery requests that were served on Publix on January 4, 2013, Publix received written paper wherein Plaintiff’s alleged injuries were multi-level cervical foraminal stenosis, accompanying cord compression with concomitant resulting cord myelomalcia. Publix also received written paper indicating that on or about October 12, 2012, the Plaintiff underwent multi-level cervical spine surgery. Further, Publix received written paper indicating that the Plaintiff was alleging that she had been disabled from

employment since July 24, 2012 sustaining an alleged wage loss of \$720.00 per week and continuing. The documents received indicate that the Plaintiff has received physical therapy, MRIs, CTs and surgery such that medical expenses are believed to be in excess of \$50,000.

7.

Attached hereto is the Affidavit of James W. Hardee, marked Exhibit "N," which contains the results of a CaseMetrix search of verdicts and settlements in personal injury cases in metropolitan Atlanta and the state of Georgia with injuries and damages substantially similar to those alleged by the Plaintiff in the within action. The CaseMetrix research includes verdicts and settlements in personal injury cases involving cervical spine injuries of the type alleged in the within suit. CaseMetrix is a verdict and settlement database that focuses exclusively on personal injury actions in the state of Georgia. The CaseMetrix reports reflect the following settlement and verdict amounts:

Case Type	Injury	Venue	Special Damages	Verdict/ Settlement
MVA	Neck (herniation)	Fulton County	\$45,025 (Medical) \$0 (Lost Wages)	\$180,000 (settlement)

Struck By object	Leg (Loss of circulation); Arm (Loss of circulation); Neck (herniation, C4-5 fusion with plating)	Fulton County	\$27,467 (Medical) \$0 (Lost Wages)	\$215,000 (settlement)
MVA	Neck (herniation, had neck surgery) Knee (pain) Leg (pain) Chest (pain, blunt trauma, herniation of the neck that required surgery; blunt trauma to the chest; pain in chest, leg and knee)	Fulton County	\$16,809 (Medical) \$1,303 (Lost Wages)	\$137,500 (settlement)
MVA	Neck (herniation, exacerbation of pre-existing herniated disk that required another surgery)	Gwinnett County	\$44,000 (Medical) \$0 (Lost Wages)	\$127,000 (settlement)
MVA	Neck (herniation)	Houston County	\$42,947 (Medical) \$0 (Lost Wages)	\$75,000 (settlement)
MVA	Neck (herniation, pain) Arm (pain, requires future surgery for multi-level cervical discectomy and fusion; soft tissue pain in the arm and neck, chiropractic).	Fulton County	\$22,700 (Medical) \$0 (Lost Wages)	\$125,000 (settlement)
MVA	Neck (herniation, C5-6 and C6-7 plate and screws)	Newton County	\$48,000 (Medical) \$0 (Lost Wages)	\$100,000 (settlement)
MVA	Neck (herniation, 2-level fusion C3-4, C4-5 with prior degenerative changes)	Bibb County	\$60,000 (Medical) \$3,000 (Lost Wages)	\$180,000 (settlement)

8.

Based upon the Plaintiff's alleged injuries, claim for medical expenses (anticipated to be in excess of \$50,000), claim for lost wages (in excess of \$18,000.00) and continuing, and claim for unspecified general damages, Defendant Publix Super Markets, Inc. submits that the amount in controversy in the within action is in excess of the jurisdictional amount of \$75,000.

9.

Now within thirty (30) days after receipt of Plaintiff Robin Houston's discovery responses, Publix removes this case to this Court pursuant to 28 U.S.C. § 1446(b) which permits a case to be removed if the case stated by the initial pleading is not removable, but the Defendant later receives other paper (which includes discovery responses) from which it can be ascertained that the case is one which has become removable, then the Defendant may remove the case to federal court on the basis of diversity jurisdiction provided by 28 U.S.C. § 1332, so long as not more than one-year has expired since the case was commenced on October 12, 2012.

10.

This action could have originally been brought in this Court under 28 U.S.C. § 1332, in that it is a civil action wherein the amount in controversy exceeds seventy-

five thousand dollars (\$75,000), exclusive of interest and cost, and there is diversity of citizenship between the parties.

11.

As between the Plaintiffs and Defendant Publix Super Markets, Inc. there exists complete diversity of citizenship under 28 U.S.C. § 1332(a).

12.

Pursuant to 28 U.S.C. § 1441, et seq., this action is now removable by reason of diversity of citizenship, there being more than \$75,000.00 in controversy, exclusive of interest and costs.

WHEREFORE, Defendant Publix Super Markets, Inc. files this Notice of Removal of said cause to this Court.

FAIN, MAJOR & BRENNAN, P.C.

BY: /s/ Richard W. Brown

GENE A. MAJOR

Georgia State Bar No. 466650

RICHARD W. BROWN

Georgia State Bar No. 089279

Attorneys for Publix Super Markets, Inc.

100 Glenridge Point Parkway
Suite 500
Atlanta, Georgia 30342
(404) 688-6633

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CERTIFICATE OF SERVICE

This is to certify that I have this date served upon counsel for the opposing parties in the foregoing matter a copy of the foregoing **Notice of Removal** by placing same in the United States Mail, postage prepaid, addressed as follows:

Keith E. Fryer
FRYER, SHUSTER & LESTER, PC
1050 Crown Pointe Parkway, Suite 410
Atlanta, Georgia 30338

Bruce Berger
BERGER LAW FIRM
Two Ravinia Drive, Suite 500
Atlanta, Georgia 30346

This 21st day of January, 2013.

FAIN, MAJOR & BRENNAN, P.C.

BY: /s/ Richard W. Brown
RICHARD W. BROWN
Georgia State Bar No. 089279
Attorney for Publix Super Markets, Inc.

100 Glenridge Point Parkway
Suite 500
Atlanta, Georgia 30342
(404) 688-6633